Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Cross-Ownership of Broadcast Stations and Newspapers	MB Docket No. 01-235

REPLY TO COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA SUBMITTED OCTOBER 23, 2006

My name is Daniel Sullivan. I am the Cowles Professor of Media Management and Economics in the School of Journalism and Mass Communication at the University of Minnesota and also currently the Visiting Knight Professor of Journalism in the School of Journalism and Mass Communication at the University of North Carolina at Chapel Hill. I am filing this reply to comment on deficiencies in the comments of the Newspaper Association of America (hereafter, NAA) and to suggest a way for the Commission to address those deficiencies while remaining true to its own goals and objectives.

The Thrust of the NAA's Comments is Fairly Simple: Abolish the Ban

The NAA's comments were submitted in response to the Commission's Notice of Proposed Rulemaking, adopted June 21, 2006. In that notice, the Commission asked for comments on three issues related specifically to newspaper/broadcast cross-ownership: 1) what alternatives to the diversity index should the Commission consider, 2) which characteristics of local markets should play a role in any limits, and 3) should newspaper/television station cross-ownership be treated differently from newspaper/radio station cross-ownership.

The Commission framed its request in terms of 1) a desire to build on and add to the prior empirical record, and 2) a desire to address specific concerns of the court related to an appropriate methodology for establishing cross-ownership limits.

The NAA's response to the request may be summed up succinctly: there is no need for any specific restrictions and thus the Commission is obligated to eliminate the cross-ownership ban. In support of this position, the Association makes four general arguments.

1. While the Court found that there was not sufficient evidence in the 2003 record to support the claim that the Internet plays a significant role in local news, the Internet has so changed since then that "the FCC should have no difficulty on remand establishing a complete record on the vital role that Internet plays in the local marketplace for news and information" (p. 47).
2. The performance of existing combined properties demonstrates that repeal of the ban "unquestionably would promote the agency's localism objectives" (p. 65) ,would actually "foster diversity by facilitating the ability of local publishers and broadcasters to provide more varied and extensive local content through multiple delivery vehicles" (pp. 65-66), and that this would happen, in part, because cross-owned properties "have strong business incentives to diversify their program or content offerings in order to reach the largest possible aggregate audience" (p. 83).
3. Cross-ownership creates the capacity to provide "extensive public interest benefits from the operational synergies" (p. 66).

4. All that is relevant for establishing that viewpoint diversity exists is that "individual media markets have a sufficient *number* [emphasis added] of local news and information outlets available to them to ensure that they will be well informed and exposed to a variety of viewpoints … [viewpoint diversity] does not, at its core, concern the 'market share' held by any one market participant" (p. 89).

The NAA's position is summed up in the following statement by NAA president John Sturm: "The relaxation of the rules will allow newspaper-owned broadcast stations to offer more and better local news and public service programming, as well as all-news formats to radio markets of all sizes. It will positively impact competition in local markets and provide healthy and diverse competition to large radio station owners. Local audiences will be the big winners."[1]

The Real Problem with the NAA's Position is Two-fold

The NAA is correct in asserting that the record does not support retaining the current cross-ownership limits. However, their reasoning in moving to a conclusion that the ban should simply be abolished is seriously flawed. Each of the propositions put forward by the NAA …[has holes]. … But, more importantly, their general approach has two serious conceptual defects. One is the simplistic, and market-based, view of what it means to "serve the pubic interest." The second is ignoring the incentives that media organizations face and how those incentives are likely to change if the ban is lifted. Many of their conclusions rest on the

[1] John Sturm, ""Time for Changes on Media Cross-Ownership Regulation," *Federal Communications Law Journal* 57, no. 2 (2005), 201-208.

assumption that newspapers are committed to honoring their "social responsibility" to serve the public interest, even if there are no economic incentives to do so.[2]

Each of these problems is discussed in more depth below.

What is the "Public Interest" Here and How Do the Media Serve It?

One characteristic that participants on both sides of the debate have in common is that underlying their arguments is a specific, well-defined assumption about what it means to "serve the public interest." This is not to say that the two sides have the same starting premise. While both talk about a "diversity of voices," the debate is often about how to define this concept.

Edwin Baker, in his highly regarded study of this issue, identifies three distinct theories of democracy found in the academic literature, each with well-known advocates, which lead to three very different interpretations of this phrase and three different views about the public's information needs. The first of these theories, which he terms the "republican" theory, embraces the view that for a democracy to succeed, it must have a well-informed electorate that understands the issues and can participate in formulating solutions to problems. This theory puts the focus on the "common interests" of all citizens. This is the classical view of democracy, the one built around the concept of "the marketplace of ideas," the one most often referenced in court decisions, and the one reflected in the writings of this

[2] This is the language used by the Hutchins Commission which has been at least the nominal guide for American newspapers since 1947. One point not made by the opponents of the ban is the limited evidence that suggests higher quality local television news does not necessarily lead to higher ratings. See, for example, Allen Parkman, "The Effect of Television Station Ownership on Local News Ratings," *The Review of Economics and Statistics*, 64, 2 (May 1982), 289-295. This suggests that incentives may play an important role in how cross-owned properties might perform in the future.

nation's Founding Fathers as they discussed the First Amendment. The other two views of democracy claim to be more "realistic" and to reflect the world as it exists today. The second theory, which Baker labels the "elitist" theory, posits that the problems government must deal with today are far too complex and require far too much information for the average citizen. Developing policies to address these problems is best left to experts in the government. The citizen's task is to become familiar with the candidates for elective office and to vote for those in whom he or she has the greatest confidence to effectively address the issues. And the final theory he calls "liberal pluralism." Unlike supporters of the republican theory who view values as endogenous and a product of the political discourse, supporters of this view treat values as externally determined and fixed. They argue that differences among groups of citizens are irreconcilable, that most people are motivated by self-interest than common interests, and that the central task of a democracy is to balance competing interests and to produce a fair distribution of society's benefits.[3]

Each of these theories has different implications for the information needs of citizens. For the elitist theory, the press's task is an informational one: to keep citizens informed about what the government is doing and to ensure that those in government are acting honestly. The press also is responsible for providing information about candidates for elective office. In contrast, the republican theory calls for a press that facilitates dialogue and discussion of issues. It also requires a

[3] C. Edwin Baker, *Media, Markets and Democracy* (Cambridge: Cambridge University Press, 2002), chapter 6.

press that is inclusive. For the liberal pluralists the task of the press is to make citizens aware of when their interests are at stake and to help mobilize them to action. It also should serve to make the government aware of citizens' needs and demands.[4] Each of these theories also implies a different role for the press in a community. For advocates of the elitist theory, that role is a passive one, serving as an authoritative resource to the community (like a library). Supporters of the republican theory want the press to play a more active role, one best described as being a community leader, someone who brings the community together and who provides a vision that empowers the community to find solutions to its problems. For the liberal pluralists, the press serves as an enabler by providing an effective "voice" to differing points of view.

Baker focuses on this issue as a theoretical question: which theory provides the best guide for what the press ought to do in a democratic society. But it is also an empirical question in that different members of the public do, in fact, subscribe to the different theories. For the media to truly serve the public interest, then, it must take these differing sets of needs into account. The key dimensions across which the three theoretical perspectives differ are what might be labeled "participation" and "pluralism." "Participation" refers to what is required of citizens for a democracy to work well – possibilities range from simply choosing elected officials to fully understanding the issues facing society and participating in the public discourse about them. Points in between would represent intermediate actions required of all citizens or a view that only some percentage of citizens need to be

[4] Loc. *cit.*

engaged in the public discourse. "Pluralism" includes both the relative weight to be given individual interests versus common interests and the degree to which differences among individuals or groups are endogenous and resolvable or pre-determined and intractable. One way to depict this task is to array the different theories in a two-dimensional space defined by these two dimensions. The three theories can be viewed as occupying three of the four corners of this space. The fourth corner represents what may not be a well-defined theory, but is certainly a view to which many people subscribe. What I will call the "agency" model asserts that issues should be addressed by those who are most interested and most affected – a version of single-issue politics. It is a model in which lobbyists play a central role, not only in developing specific policies, but also in working to prioritize issues. The citizens role in this model, in addition to voting, is to provide financial support for those groups that represent his or her interests and then to rely on them to effectively represent those interests. The role of the press in this model is similar to its role in the elitist model: keep the public informed. However, its watchdog function expands to cover not only the government, but also the major private actors in the policy-making process. One final point should be noted: individuals' views may shift depending on the level of government in question. Someone who is an "elitist" when it comes to the federal government may be a "republican" in reference to local government matters. For the most part, however, these shifts are likely to apply to movement along the participation axis and not the pluralism axis.

Figure 1 summarizes this discussion, showing the relationships schematically and listing the major elements of the various theories. Given the assumption that at least some members of a society subscribe to all four models, one question is whether we can identify both the number in each cell and what their media consumption habits are. This information would provide a starting point for determining how the media can best serve society.[5] Using data from recent surveys done by the Pew Center for the People and the Press, we can get a rough idea of the size of the four quadrants. This very preliminary analysis suggests that, in terms of attitudes and values, about 24 percent of adults subscribe to the "elitist" model, about 38 percent to the "republican" model, about 25 percent to the "liberal pluralist" model and about 13 percent to the "agency" model. Moreover, the data suggest that overall media consumption is related to where one is on the participation scale – strong republicans and strong liberal pluralists consume all forms of media and in relatively large amounts. Elitists are least likely to be newspaper readers, and liberal pluralists are most likely to rely on the Internet. Moreover, republicans are most likely to treat different media as complementary, while elitists are most likely to treat them as substitutes.[6]

There are two additional hypotheses I would put forth here. One is that most media organizations tend to focus on one of the four models and generally act

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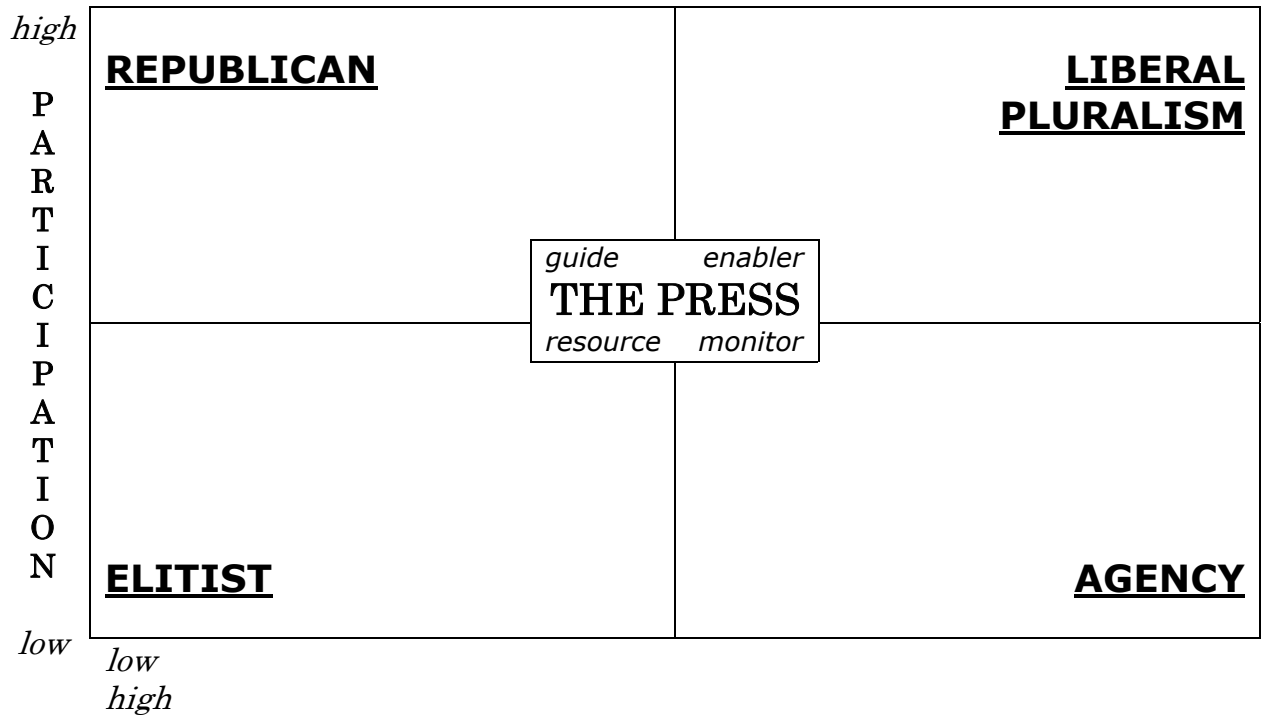
[5] The point here is that the different groups may have different preferences for how they get their news.

[6] Based on indexes constructed from questions in the 2004 Biennial Media Consumption Survey and the 2005 News Interest Index/Media Update survey, both done by the Pew Center for the People and the Press. While this analysis is too preliminary to draw any meaningful conclusions, it does suggest that doing a more careful, focused study would be worthwhile – in addition to establishing the diversity of needs, such a study might help to clarify what "diverse voices" would mean to different members of society and to determine how interrelated or separate the various media markets are.

consistent with that one view of the press' role. For example, the mission statements of most newspapers reference the need to create well-informed citizens and to facilitate meaningful public discourse on important issues.[7] While many individual editors and journalists have sought to expand their papers' roles to include mobilizing citizens and/or taking a more pluralistic approach to the news, most organizations have been resistant to significant movement in these directions. The second is that most media act as though their business challenge (with regard to growing audience) is getting more of the public into that particular quadrant. For example, newspapers are constantly promoting the need for citizens to be well-informed on issues, and most subscribe to the Project for Excellence in Journalism's definition of quality which includes covering issues of significance to the whole community and doing so in a fair and balanced way. The diagram below positions the press in the center, implying that the task of the press as a whole is to serve all four quadrants, and to do so in a way that facilitates communication among the four quadrants. What remains an open question, one with particular relevance to the cross-ownership debate, is how much of this task can be accomplished by a single medium or by a single organization with multiple media outlets.

[7] The preamble to the SPJ code of ethics also includes a strong statement to this effect.

Figure 1.
Alternative Views of Democracy, the Information/Communication Needs of Citizens And the Role of the Press



Elitist	Republican	Liberal Pluralist	Agency
Problems too complex, leave to (gov't.) experts	Full participation	Participation and action	Issue-based/rely on agents/lobbyists
Value of voting is in outcome	Value also in process	Need to get beyond voting	Contributions important
Values given/set by govt.	Values endogenous	Values exogenous	Values exogenous
Everything empirical	Values reconcilable	Values not reconcilable	Winners & losers frame
Watchdog = honesty only	Watchdog = honesty + self-interest	Watchdog = ensure fair debate (assume self-interest)	Watchdog = track the players as well
Focus on people over issues	Focus on issues	Focus on issues	Focus on agents/values
Information over source	Discourse/dialogue	Debate/advocacy	Information/ focus on understanding

Decisions based on expertise	Decisions based on better argument	Decisions based on stronger (fair) pressure	Decisions based on pressure
Polling useful for gov't.	Polling not useful	Polling useful for gov't. + people	Polling has limited use
News objective/balanced	News objective & comprehensive	News partisan – advocacy	News partisan & prioritized
Press has *passive* role (as *resource*)	Press has *active* role (as *guide*)	Press has *active* role (as voice/*enabler)*	Press has *passive* role (as *monitor*)

Implications for Possible FCC Actions

This model raises a number of issues that have implications for current FCC policy. To begin, it is clear that the current debate takes a simplistic approach to defining the information needs of our democratic society. The various participants all seem to focus on one of the four views of democracy – virtually all opponents of the ban seem to argue from the republican model, while most supporters implicitly support the liberal pluralist model. In both cases, content diversity and outlet diversity appear to be viewed as essentially the same. The disagreement is about whether one media outlet can provide a diversity of ideas.[8] Both sides also appear to treat "localism" as just one more dimension of diversity rather than as an element that can redefine the diversity of citizens' information needs. The key point here is that the positions of both sides in this debate are essentially normative and not primarily based on empirical evidence. The purpose of the model presented above is to help explicate these differences and to show that, in a sense, both views are legitimate.

The model is also intended to make clear that in a world where diverse views about democracy exist and where the need exists for integrating these different segments of society, there is a need for some media entity to play an integrating role. The preliminary analysis suggests that most likely such an entity would need to operate through multiple channels. Any entity seeking to serve this role – what Phil Meyer has referred to as providing the "glue" for a community – will need a

[8] For both groups, diversity seems to be more associated with ownership than, as most journalists are taught to believe, with sources. (See, for example, Pritchard, "A Tale of Three Cities," 37.) The main difference is in how willing owners are to allow a diversity of viewpoints.

business model that focuses on building trust and credibility with citizens of all types.

What are the Incentives that Newspapers Face?

Neither side in the current debate appears to pay much attention to the incentives facing media providers today.[9] What the above model makes clear is that these incentives are much more complicated than a simple market model might suggest.

There are a number of gaps in the case for retaining the ban which this model helps to highlight. While many supporters of the ban point to the increased concentration of ownership of daily newspapers, they ignore the well-reported secular trends: newspapers are declining in audience, in advertising revenue and in profitability – none of which suggests increased market power. Indeed, as the recent sale of Knight Ridder suggests, newspapers as standalone enterprises are not viewed by most investors as growth businesses. Thus, while newspaper organizations may be committed to their "social responsibility," they are incented to act otherwise. Supporters of the ban also seem to forget that most media operate as though they are in the business of selling eyeballs (or ears) to advertisers, and here the various media are becoming increasingly interchangeable. Moreover, there is a tendency among supporters of the ban to weight media "voices" in terms of their current audiences and thus, for example, to ignore the wide gap between the resources of a daily newspaper and the resources of a local broadcast station.

[9] For example, operators of grandfathered cross-ownership situations clearly are incented to demonstrate that they do not reduce the "diversity of voices."

Supporters also seem to ignore how weak the public service requirements have become for broadcast license-holders. The model above suggests that these different types of media might better serve the public functioning as complements rather than as substitutes.

Conventional economic theory suggests two additional weaknesses in the arguments underlying the current policy. The first is the role of demand in determining the diversity of content provided. As the model presented here makes clear, diversity needs are about more than just viewpoints. They also are likely to vary significantly by market size. Some supporters of the ban frame the issue in terms of the "potential" for diversity of views rather than what actually occurs, especially in terms of the FCC's desire to promote "localism."[10] However, they ignore the fact that economies of scale increase the likelihood that a larger local player will have greater capacity to serve local needs – and will do so if properly incented.[11]

All of this is not to say that eliminating all ownership restrictions and letting the market determine the outcome, as some ban opponents have argued,[12] will be in the best interest of society. The entity I described above is not one likely to emerge and endure as a result of free competition. A number of authors have effectively demonstrated that there are at least two important reasons why the market is not

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[10] The U.S. Supreme Court actually legitimized the view that more owners means more "potential," in upholding the Commission's 1975 ban – *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 796 (1978).

[11] One finding of the PEJ study was that currently the evidence suggests that local ownership is associated with lower quality news. See PEJ, "Does Ownership Matter."

[12] See Owen, "Regulatory Reform," and Knee, "Should We Fear Media Cross-Ownership?"

likely to yield the best outcome for society.[13] Perhaps most important, the market weights individuals' preferences by their ability to pay – or, in the case of most media, by their value to advertisers. This fact gives a lot of weight to some individuals or groups and little or no weight to others. A second factor is that there are considerable positive externalities associated with public affairs content (i.e., one individual's consumption of public affairs content benefits other members of the society), which means that free markets will undervalue this type of output and, given its cost, tend to produce too little of it. Taken together, these two factors suggest that not only will the market not yield the best outcome; simply relying on enforcement of existing anti-trust laws, a position advocated by some,[14] will not work.

One Possible Approach to Addressing These Problems

The 1996 Act created a bias toward deregulation. While the Commission understands this bias, it also recognizes the need for some regulation. This suggests that a meaningful "middle ground" in the current debate should reflect three principles. The first is to minimize the government's role in controlling both access to markets and the operations of those in a market. In the context of the issue being addressed here, this means the government should seek to use incentives rather than absolute rules. The second principle is that what is desirable or required of providers, and what is not, should be as uniform as possible and as

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[13] See for example, Baker, chapter 6, or David Croteau and William Hoynes, *The Business of Media: Corporate Media and the Public Interest* (Thousand Oaks, CA: Pine Forge Press, 2001).
[14] See, for example, Owen, "Regulatory Reform."

predictable as possible. This principle does not require fixed rules. As the DOJ/FTC Merger Guidelines have demonstrated, well-defined guidelines can lead to a case-by-case approach achieving this objective. Finally, the government should minimize paternalism – where centralized or collective decision-making is necessary, the government needs to maximize input from the public at the local level.

The FCC's proposed rule changes in 2003 were, in a sense, an attempt at forging a middle ground: allow cross-ownership in some markets, prohibit it in others, and provide for case-by-case review in others. However, the Commission relied on the framework as previous decisions, with all of the weaknesses identified here. The foregoing analysis suggests a different approach to establishing a middle ground, one that focuses on the important role that incentives can play in organizational behavior and also recognizes the diversity of information needs among the public. Moreover, since incentives are closely linked to the information available to decision-makers, it also seems desirable to take advantage of the new information technologies now available. What I would propose is the following four-point framework as a basis for the FCC revising the current regulations.

1. Shift from the current outright ban not to a three-tiered system, but to a universal case-by-case review with clear guidelines (similar to the DOJ/FTC guidelines) that recognize not only the differing numbers of providers in markets of different sizes, but also the differing needs for information diversity.

2. Establish clear (and stronger) public service requirements for broadcast, including diversity of viewpoint requirements; Offer organizations the option of having the requirements apply to the entire entity so that while the newspaper would not be regulated, its public service performance could be considered as part of the broadcast property's license renewal.
3. Introduce a reporting procedure that requires cross-owned properties to publicly report on their public service performance on an ongoing basis and require that this information be available online. The framework for the report would be a social audit tool (similar to the type of tools used by socially responsible investors).
4. Reduce license period to 5 years and modify the process (including using the Internet) to allow more effective public input into re-licensing.

This proposal is not meant to reverse FCC policy. Rather, it seeks to make that policy more consistent with a free-market orientation, given the market imperfections discussed earlier. It seeks to increase the flow of information and to shift the focus from rules to incentives. The first point is intended to have everyone subject to the same rules, as well as to recognize that market size alone is not the only determinant of the diversity needs of a community. The fourth point is intended both to increase accountability without creating an undue burden,[15] and to maximize the interaction between the community and the media that would serve it. The heart of this proposal are points two and three. They call not for increased regulation, but for an increased (and more standardized) flow of information. They

[15] Five years is a normal "long-term" planning horizon for many companies.

also allow organizations to take advantage of the synergies they claim exist by treating the print and broadcast operations as one. This reporting, together with the mechanisms for public feedback to the FCC, will create incentives to treat the public service obligations seriously; and the ability for communities to compare their local media entities with those elsewhere should create "market" pressure for these entities to be locally responsive.

Conclusion

There are two major problems with the current approach to the question of newspaper/ broadcast cross-ownership. One is that no media property is incented to truly serve the public interest. Their priorities are set by advertisers. Some may actually serve the public interest well, but as the advertising environment becomes more competitive, currently most incentives go in the other direction. The second problem is that the information needs of citizens require a mix of different types of media, not just many diverse, but otherwise similar, voices. A central premise of this paper is that some entity needs to play an integrating role if we are to have an effective democracy. The medium most likely to play an integrating role for a community is the local daily newspaper. However, many are under extreme profit pressure these days, and the well-reported cuts in newsrooms staffs are not based on the pursuit of journalism excellence, for one simple reason: quality journalism is not part of the business model. A number of authors, most notably Phillip Meyer,[16] have begun exploring how to change this. The goal here is to create incentives in

[16] See Phillip Meyer, *The Vanishing Newspaper: Saving Journalism in the Information Age (Columbia: University of Missouri Press, 2004).*

this direction. The plan does not tell newspapers what they can and cannot do, nor even what they should or should not do. It only requires that for those that choose to also control a broadcast outlet in their communities, they communicate whatever it is that they are doing, and that they do so in a regular and standardized way that would allow comparisons across companies and over time. It will be up to local communities, together with the FCC, do decide how well these organizations meet community needs. The idea is that public pressure can incent companies to do a good job.[17] In turn, profit pressures will incent companies to make quality journalism part of their business model. Clearly this approach will only work if the FCC takes its review responsibilities seriously.

If this idea works, it becomes self-reinforcing. A five-year period is sufficiently frequent for real accountability. It is also long enough for companies to have enough invested in the joint enterprise that they don't want to lose it. Moreover, if the added information and reporting requirements of this proposal are standardized and ongoing, then the additional burden on companies will be minimal, and much of the review process can be "automated" so as to minimize any additional costs associated with using a case-by-case approach.

In the late 1990's, the *Star Tribune* in Minneapolis undertook an initiative which it called the "Enterprise VII." This set of measures included not only conventional measures like revenue and circulation, but also reader, advertiser and employee satisfaction, brand equity, and journalistic quality and credibility. While

[17] This was a key premise of the Hutchins Commission when it put forth its "social responsibility" model in 1947.

used for only a short period of time, the measures demonstrated the viability of the "audit" concept.

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